



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Surrey Gardens Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC MNSD

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on October 26, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The Landlord had an agent attend the hearing on their behalf (referred to as the Landlord). The Tenant did not attend the hearing. The Landlord stated that she sent the Tenant the Notice of Hearing and evidence by registered mail on April 24, 2018 (to the forwarding address). Pursuant to section 88 and 90 of the Act, I find the Tenant is deemed to have received these documents on April 29, 2018, the fifth day after their mailing.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested?

### Background and Evidence

During the hearing, the Landlord testified the following:

They currently hold the Tenant's security deposit of \$450.00. The Tenant moved out of the unit around April 13, 2018, after giving one month notice he would be leaving. The Landlord stated they have been unable to get a hold of him since he left. The Landlord stated that the tenancy was a fixed term tenancy, ending June 30, 2018. The Landlord stated that the Tenant broke his lease when he left part way through April.

The Landlord pointed to the lease agreement which shows that the Tenant agreed to a liquidated damages clause in the event he terminated the tenancy early. The Landlord stated that they incurred some costs to re-rent the unit, which is why they have the liquidated damages clause in the agreement. The agreement specifies that the Tenant will pay \$200.00 if he ends the tenancy early.

The Landlord stated that the Tenant left the rental unit dirty, and they had to hire a cleaner for 5 hours at \$35.00 per hour to clean the whole unit (\$175.00). The Landlord stated that the stove was very dirty and everything was generally dirty. The Landlord also stated that the Tenant was required to clean the carpets. However, he didn't, so the Landlord did this for him at a cost of \$90.00.

In total, the Landlord is looking for \$465.00, as laid out above, but since they only hold \$450.00 as a security deposit, this is all they are looking to recover. The Landlord stated that they do not want to be bothered with a small monetary order for anything above \$450.00.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find the evidence before me sufficiently demonstrates that the Tenant left the unit dirty and in need of cleaning, prior to it being in a state where it can be re-rented.

I find the Landlord's expenses to remedy the rental unit are reasonable. I grant the Landlord the full amount of their claim for cleaning expenses of \$265.00, as laid out above.

Further, I note the tenancy agreement specifies a liquidated damages clause in the event the Tenant vacated the unit prior to the end of the fixed term lease. I find \$200.00 is a reasonable pre-estimate of the costs to re-rent the unit, and I award the Landlord this item, since the Tenant broke the lease, and it was clearly laid out in the tenancy agreement.

Pursuant to section 72 of the Act, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

<u>Item</u>	<u>Amount</u>
Carpet Cleaning	\$90.00
Cleaning Services	\$175.00
Liquidated Damages	\$200.00
LESS: Security Deposit	(\$450.00)
<b>Total Amount</b>	<b>\$15.00</b>

Since the Landlord stated they did not want a monetary order for the extra amount, above and beyond what the security deposit was, I will not issue any further orders. The Landlord may retain the security deposit in full.

### Conclusion

The Landlord is authorized to retain the security deposit in full, which is \$450.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 29, 2018

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Residential Tenancy Branch